

BEFORE THE  
CALIFORNIA ENERGY COMMISSION

In the Matter of:	)	Docket No. 12-AAER-1
	)	
	)	
Implementation of - SB 454	)	STAFF WORKSHOP
(Public Resources Code	)	RE: Appliance Efficiency
<u>Section 25402.11)</u>	)	Enforcement Rulemaking

APPLIANCE EFFICIENCY ENFORCEMENT RULEMAKING

CALIFORNIA ENERGY COMMISSION  
HEARING ROOM A, 1516 NINTH STREET  
SACRAMENTO, CALIFORNIA

TUESDAY, FEBRUARY 25, 2014  
10:00 A.M.

Reported by:  
Kent Odell

## APPEARANCES

### Commissioners Present

Karen Douglas  
Andrew McAllister

### Staff Present

Consuelo Martinez, Office Manager, Appliances and  
Existing Buildings Office  
John Nuffer, Project Manager  
Galen Lemei, Staff Counsel  
Maunee Berenstein  
Bruce Helft  
Peter Strait

### Also Present (\* Via telephone and/or WebEx)

Patrick Splitt, Aptech  
Dick Upton, President, American Lighting Association  
Kris Quackenbush, Board member, American Lighting Association  
Kevin Messner, Association of Home Appliance Manufacturers  
Clark Linstone, American Lighting Association and  
representing Lamps Plus (California)  
Eddie Moreno, Sierra Club California  
Gary Fernstrom, representing Pacific Gas & Electric  
Company, San Diego Gas & Electric Company, and  
Southern California Gas Company  
John Green, Manager of Codes and Standards,  
Eaton Cooper Lighting  
Molly Swartz, Attorney with Paul Hastings, on behalf of  
Osram Sylvania  
Lisa Shay, representing Natural Resources Defense Council  
(NRDC)  
\*Nathan Coelho

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P R O C E E D I N G S

FEBRUARY 25, 2014 10:10 a.m.

COMMISSIONER DOUGLAS: All right, good morning everybody. I'm Karen Douglas, I'm a Commissioner assigned to this proceeding and working very closely with Commissioner McAllister, who will introduce himself in a moment, he's our lead Commissioner on energy efficiency.

So it's actually been a long time coming to get to the point where the Energy Commission has a draft regulatory package to put out on the street and get comment on for implementation of the enforcement authority for the Appliance Efficiency Standards.

I really appreciate seeing a full room and hopefully quite a few people on the phone and on WebEx with us today. We're looking forward to hearing what you think of the product we put out, we're looking forward to getting comments from stakeholders more broadly, as well, in terms of the program and program emphasis as we move forward. So I appreciate you being here. I'll ask Commissioner McAllister to make any opening comments.

1                   COMMISSIONER MCALLISTER:   Great, thank  
2   you very much.   This is a staff workshop, so  
3   staff is going to run the show here and I think  
4   I'll feel free to ask questions if I need to, but  
5   as should everybody else at the appropriate  
6   moment.   I'm Andrew McAllister, as Commissioner  
7   Douglas said, the lead Commissioner on Energy  
8   Efficiency matters.   This proceeding is important  
9   for the Commission because it's letting us, I  
10   think, complement our existing authority with new  
11   authority, it makes a lot of sense that that also  
12   falls within this building, or sits well within  
13   this building.   We've always had the authority  
14   and the processes in place to develop rules on  
15   Appliance Efficiency Standards, but not the  
16   commensurate authority to go out there and  
17   enforce and create any consequences for  
18   noncompliance.   And so I think this is a natural  
19   step for us.   The Legislature has seen fit to  
20   give us this authority and we want to do it  
21   right, and I know staff is doing a terrific job  
22   up to now on this, and hopefully we'll get all  
23   your comments, any stakeholders that are  
24   interested in this, in a timely fashion so we can  
25   make sure that we're going forward in a

1 reasonable way and putting in place something  
2 that is workable and transparent and accountable  
3 all around, including here at the Commission and  
4 out there in the market.

5 So we really appreciate your being here  
6 and, without further ado, I'll pass this on to  
7 John and Staff.

8 MR. NUFFER: And I will pass it off to  
9 Consuelo.

10 MS. MARTINEZ: Good morning, everyone.  
11 I'm Consuelo Martinez. I'm the Manager of  
12 Appliances & Existing Buildings Office. Thank  
13 you all for attending today. I know some of you  
14 have come a long way and we appreciate the effort  
15 you took to get here. For all those on the  
16 WebEx, we're on the phone, thank you for your  
17 valuable time, as well. We're looking forward to  
18 hearing from all of you, not only today, but also  
19 in the future, as we move forward to develop an  
20 effective enforcement Program.

21 Now I'd like to introduce some of our  
22 staff. John Nuffer is the Project Manager for  
23 this rulemaking, he will be leading the  
24 presentation and discussions today with the help  
25 of Galen Lemai, our lead attorney for the

1 rulemaking. Also here from my staff are Maunee  
2 Berenstein and Bruce Helft, as well. And they  
3 are part of the multidisciplinary team that have  
4 developed our Draft Regulations. I will pass the  
5 presentation on to John, and thank you all for  
6 coming.

7 MR. NUFFER: Good morning, everyone.  
8 Thank you very much for coming. Let me get a  
9 couple housekeeping items out of the way. For  
10 those of you who aren't familiar with our  
11 building, the restrooms are out the doors to the  
12 left and across the lobby. There's a snack bar  
13 up the stairs and across the patio on the second  
14 floor. If we have to evacuate for some reason,  
15 follow us and we'll go out the main doors and  
16 down the street to the park across the  
17 intersection and assemble there.

18 I'd like you to know that we're having  
19 the workshop transcribed and we're also recording  
20 the WebEx, and both of those will be available  
21 online probably in a couple weeks.

22 And we're also at this point trying to  
23 figure out how stakeholders can make comments  
24 while we're doing the workshop. Over there in  
25 the corner, there are two laptops we're trying to

1 set up so that you can make comments in writing  
2 directly to us if that works for you.

3 And for those on WebEx, when you want to  
4 speak, please click the raised hand button and  
5 we'll unmute your phone line. Also, you can chat  
6 your comments to staff. And those on the phone,  
7 please mute your phone until you want to speak  
8 and we'll unmute all of the phone lines during  
9 the public comment period.

10 So let me provide some purpose today for  
11 this workshop. My hope is that by the end of the  
12 day everybody will not only have a better  
13 understanding of our current enforcement process  
14 and how we propose to enhance that process  
15 through regulation, but also how we plan to keep  
16 you informed and engaged as the rulemaking  
17 proceeds.

18 As context, as most of you know,  
19 California has had Energy and Water Efficiency  
20 Standards for decades. The Energy Commission has  
21 also had the authority to enforce those  
22 standards. With the passage of Senate Bill 454  
23 in 2012, we were given an additional enforcement  
24 tool; the Commission now has the authority to  
25 assess monetary penalties for violations of the



1 Standards. It is important to note, though, that  
2 in order to exercise that authority, the  
3 Commission must develop Regulations to guide the  
4 exercise of that authority.

5           Today we're going to share the  
6 Regulations we've developed for that purpose and  
7 to let you know we're only in the preliminary  
8 phase of this rulemaking, so we'll be sharing  
9 with you today where we go from here and how you  
10 may stay involved and engaged throughout the  
11 process from here on out.

12           I'd like to share what we'd like to cover  
13 today and what we're not going to cover today.  
14 I'd like to focus the discussion because we have  
15 a lot to talk about and people have come a long  
16 way and I want to make sure we get everybody's  
17 comments on the Regulations. I want to focus on  
18 our current enforcement authority, the Draft  
19 Regulations, and the rulemaking process, and our  
20 enforcement process, which we'll talk about later  
21 in the workshop.

22           There really isn't time to cover any  
23 other Appliance Rulemaking or our Appliance and  
24 Certification requirements. And I'd like to  
25 acknowledge that there is a separate and distinct

1 Appliance Rulemaking going on, the purpose of  
2 which is to make minor changes to California's  
3 Appliance Efficiency Regs so that they conform  
4 with federal law. We're not going to talk about  
5 that today.

6           However, so that everyone understands the  
7 compliance and certification requirements before  
8 these enforcement regulations take effect, we'll  
9 be ramping up an outreach and education effort in  
10 the coming months, which may involve personal  
11 assistance, webinars, targeted outreach and  
12 education for specific groups, and we would  
13 welcome your participation in them.

14           Let's talk about our current enforcement  
15 process. These are the primary features of our  
16 current enforcement process. We find out about  
17 potential violations of the Standards in a number  
18 of ways including market surveys, inspections and  
19 testing, and complaints from competitors. We  
20 investigate potential violations and do our  
21 utmost to engage responsible parties in a two-way  
22 discussion. After an administrative process, the  
23 Commission has had the authority to remove an  
24 appliance from the database, which would then  
25 prohibit its sale in California. The Commission

1 could also ask the Attorney General to seek an  
2 injunction for violations of the Appliance  
3 Standards. The Attorney General may still seek  
4 injunctions and now, because of the passage of  
5 Senate Bill 454, also seek Administrative Civil  
6 Penalties for violations of the Appliance  
7 Standards.

8           Senate Bill 454 became law in 2012. The  
9 Bill authorized the Energy Commission to  
10 establish an administrative process to impose  
11 Administrative Civil Penalties for violations of  
12 the state's Appliance Efficiency Standards.

13           After the Bill became law, we published a  
14 Request for Information which sought input from  
15 stakeholders about how we should implement the  
16 Commission's new authority.

17           We then held a public scoping workshop  
18 seeking guidance from stakeholders and other  
19 agencies. During and after the workshop, we  
20 received suggestions, comments and questions  
21 which informed our development of these Draft  
22 Regulations.

23           As I mentioned, we're now in a  
24 preliminary phase of the rulemaking, the time at  
25 which we share a draft of the Regulations and

1 again ask for your comments and suggestions.

2 I sincerely appreciate the time and  
3 effort you've all made to participate in this.  
4 Thank you.

5 The next phase of the rulemaking is  
6 expected to begin sometime this summer, when  
7 we'll publish a final draft for public review.  
8 We will keep you informed about the status of the  
9 rulemaking through our website and our email  
10 Listservs, so please make sure that if you aren't  
11 on our Listservs you get on the Listservs, and if  
12 you need help, please ask.

13 As background, the Legislature recognized  
14 that there was less than full compliance with the  
15 Appliance Efficiency Standards and that  
16 violations were resulting in harm to consumers  
17 and especially to responsible businesses. The  
18 Legislature therefore gave the Commission new  
19 authority to assess Administrative Civil  
20 Penalties not to exceed \$2,500 for each violation  
21 of the Appliance Efficiency Standards. These  
22 penalties will be assessed through a formal  
23 adjudicative process or settlement, and we'll  
24 explain a little later what we mean by  
25 adjudicative. And the Commission may also still

1 refer cases to the Attorney General.

2           This slide is up here to distinguish  
3 between the current Appliance Efficiency  
4 Regulations and what we're proposing today. The  
5 current Energy and Water Efficiency Standards are  
6 found in Sections 1601 through 1608 of the  
7 California Code of Regulations. Those sections  
8 also include appliance testing, marking, and  
9 certification requirements. Together, those  
10 sections are called the Appliance Efficiency  
11 Regulations.

12           We're not making any changes to those  
13 sections of the Code, we're simply adding a new  
14 section, Section 1609. And as I mentioned  
15 before, the Commission has another separate and  
16 distinct rulemaking which we won't be discussing  
17 today.

18           I think it's important that I share our  
19 enforcement goals with you; these goals form the  
20 foundation for the development of the Draft  
21 Regulations, and I'll do that in a minute. After  
22 that, we'll take a short break before we begin  
23 discussing the Regulations so that those who  
24 don't have a copy of the Regs may get one because  
25 we're going to discuss the Regulations subsection

1 by subsection.

2           So the goals of enforcement are, 1) to  
3 promote compliance, protect consumers, to provide  
4 a level playing field for those businesses that  
5 are playing by the rules, to achieve the  
6 environmental benefits of energy efficiency,  
7 especially to provide timely and fair resolution  
8 of violations of the standards.

9           This is kind of a table of contents of  
10 the Regulations and we'd like to go subsection by  
11 subsection, describe what we're trying to  
12 achieve, and then ask for questions and comments  
13 about that particular subsection, especially  
14 about the meaning or language of the text. If  
15 you have more general questions, comments or  
16 concerns about enforcement or the Regulations in  
17 general, I'd ask that you please share those  
18 during the public comment period after we go  
19 through all of the Regulations. And if you think  
20 of a question after we've gone through a  
21 subsection and passed it, please also ask that in  
22 the public comment period.

23           So we can take a five-minute break to get  
24 the Regulations, get set, and then we'll go  
25 through the sections item by item. So let's --

1 does everybody have the Regulations? They're on  
2 the table outside or on the table in the foyer.

3 (Break at 10:25 a.m.)

4 (Reconvene at 10:29 a.m.)

5 MR. NUFFER: I think everybody has copies  
6 now. Thank you. I would like to mention that  
7 this Powerpoint presentation will be on our  
8 website in a couple days, maybe even tomorrow.

9 So let's start with Subsection (a). The  
10 beginning is a good place to start, I guess.  
11 While it's true that any violation of the  
12 Appliance Efficiency Standards is subject to an  
13 administrative civil penalty, there are three  
14 major violations that are called out in the  
15 Regulations. The first is the sale of a  
16 regulated appliance that is not listed in our  
17 database, the second is the sale of a regulated  
18 appliance that doesn't meet the standards, or  
19 that doesn't performed as advertised, and the  
20 third is falsifying data.

21 If you could take a minute to review the  
22 text if you haven't already, and then we'll take  
23 your questions and comments about this  
24 subsection. Thank you.

25 Please state your name and affiliation.

1           MR. SPLITT: Pat Splitt from Aptech in  
2 Santa Cruz, Energy Consultant. I had a questions  
3 about the violations. If, say, for instance  
4 somebody has installed a boiler, the manufacturer  
5 may have their U.S. office in Southern California  
6 and they import this equipment, and then they  
7 sell it to distributors, then the distributors  
8 sell it to a local plumber, or local plumbing  
9 supply house, and they may again sell it to the  
10 local plumbers, so there may be four people  
11 actually that purchased that piece of equipment,  
12 so which one of them, or are all of them subject  
13 to penalties?

14           MR. LEMEI: So I don't understand that to  
15 be a question about like the language, in  
16 particular, but more of kind of a holistic  
17 question in terms of who is subject to a  
18 violation.

19           MR. SPLITT: Well, who is the violator?

20           MR. LEMEI: I think that the Regulations  
21 speak to any conduct that violates the -- any  
22 sale that violates the Appliance Efficiency  
23 Standards, so investigations and determinations  
24 would be on a case-by-case and fact specific  
25 basis. But in concept, I think it's possible



1 that something higher up in the supply chain  
2 could be a violation. And again, for this first  
3 part, we're talking about specifically the sale  
4 of an appliance that's not on the database as  
5 opposed to the sale of an appliance that isn't  
6 meeting the substantive Standards, but that is  
7 certified.

8 MR. SPLITT: Okay, but then it sounds to  
9 me like perhaps all four of them could be fined?  
10 Or they're going to fight to see who is really  
11 the most evil of the four? You know, they all  
12 sold the appliance which is a violation of the  
13 Code.

14 MR. LEMEI: Were those sales all in  
15 California? Again, it could be fact specific, it  
16 would need to be -- we would need the facts of a  
17 particular case to make the determination of  
18 which party has committed a violation of the  
19 Standards.

20 MR. SPLITT: Okay, but you don't have any  
21 way of -- you haven't defined that yet. If you  
22 go to the plumber, the plumber is going to say,  
23 well, it's not his fault, the --

24 COMMISSIONER MCALLISTER: So there's a  
25 whole list that we'll go through here about what

1 the particular things that we take into account  
2 that would inform any sort of flagging of a  
3 violation and a process there. So, intent for  
4 example is one of the things, and so there's a  
5 whole list of them and we'll go through that and  
6 I think it will become clearer.

7 MR. SPLITT: At any rate, I can see it  
8 being a problem down the line if you don't define  
9 how you're going to pick that person.

10 MR. LEMEI: Sure. I think that  
11 Commissioner McAllister is making an excellent  
12 point and, you know, I think after we get through  
13 the particular language and take questions on the  
14 particular language, we can talk about kind of  
15 some of the more holistic questions in the  
16 context of the full regulatory package.

17 MR. NUFFER: Do we have any other  
18 questions about this subsection or comments?

19 MR. STRAIT: We do have a question that  
20 came in by chat. One person has asked where  
21 labeling requirements would be captured under  
22 this. I can answer that for appliance  
23 certification; labeling and marking requirements  
24 are included both in the Declaration and, in some  
25 cases, in the data file that is submitted. So

1 that would be included in the statements made to  
2 us regarding the condition of the device or  
3 appliance.

4 MR. NUFFER: Any other questions or  
5 comments about this subsection? Anybody on the  
6 phone that has questions or comments about this  
7 subsection.

8 MR. STRAIT: I am not seeing any raised  
9 hands currently. I can unmute the lines briefly  
10 for call-in users that may not be attending from  
11 a computer. All right, this may be noisy, one  
12 moment. Just as a reminder for those that are  
13 attending by phone, please mute your lines so  
14 that, if there is anybody trying to make a  
15 comment, they're able to speak. It didn't sound  
16 like anyone was trying to be heard at the moment,  
17 though.

18 MR. NUFFER: Yes, Dick?

19 MR. UPTON: Good morning. I'm Dick  
20 Upton, the President of the American Lighting  
21 Association. We might be able to help on this  
22 issue from a standpoint of our membership is made  
23 up of the designers, the manufacturers, component  
24 manufacturers, manufacturer representatives, and  
25 independent retailers who sell those products.

1 And I was visiting with Clark Linstone, who is  
2 the CEO of Lamps Plus and the President of  
3 Pacific Coast, and I think universally our retail  
4 members would be anticipating that if they're  
5 purchasing a product from a manufacturer, per se,  
6 in California, that manufacturer has registered  
7 the product and they would look to the  
8 manufacturer to hold them harmless, as well, in  
9 that circumstance, so we have an interest in  
10 supporting all categories here, but reality says  
11 it's going to have to be the manufacturer, we  
12 think, that gets looked to.

13 MR. LEMEY: So again, I think it makes  
14 sense to talk about that in the context of also  
15 the considerations including willfulness and  
16 other factors, which could come into play. And  
17 also, I think that you're raising an important  
18 point, and that is that the private contract  
19 between the parties, for example, an  
20 indemnification clause, could not only be  
21 relevant to our consideration in terms of our  
22 weighing of the factors, but could also affect  
23 the responsibility between the parties and an  
24 agreement or a contract to indemnify for a  
25 penalty if there was then a penalty assessed,

1 then that would presumably kick in, I think.

2 MR. UPTON: I think you get down to  
3 realities. Most of our member retailers are  
4 small --

5 MR. LEMEI: Right.

6 MR. UPTON: -- by Uncle Sam's category,  
7 and 95 percent of all of our members are small  
8 business, but manufacturers are certainly in a  
9 much better position to organize themselves to  
10 ensure they're doing what they're supposed to be  
11 doing, as opposed to the small retailer who is  
12 carrying -- we have members, I'm sure, who are  
13 carrying 50-60 different manufacturers' products.  
14 And they've got different kinds of categories,  
15 but whether they're watching as much as they  
16 should be watching, I think they're still going  
17 to be looking to the manufacturer to help them on  
18 that. Kris, you're a Manufacturer's Rep, am I  
19 saying that correctly?

20 MR. QUACKENBUSH: Yeah, absolutely.

21 MR. UPTON: And by the way, I'll  
22 volunteer Kris Quackenbush, a member of our  
23 Board, lives in this area and is knowledgeable  
24 and respected and really could be a big help.  
25 Thank you.

1 MR. NUFFER: Thank you.

2 MR. LEMEI: I just wanted to briefly  
3 address the prior question, there was a question  
4 about labeling and I just wanted to point out  
5 that the regulations point to Section 1608(a) in  
6 speaking to the two examples, and 1608(a)(2)(B)  
7 specifies that the unit must be marked as  
8 required by Section 1607. So labeling is  
9 explicitly captured and marking is explicitly  
10 captured under 1608(a)(2)(B), which is referenced  
11 by the example.

12 MR. NUFFER: Yes?

13 MR. MESSNER: This is Kevin Messner with  
14 the Association of Home Appliance Manufacturers.  
15 I had a question, and I might have missed it, I  
16 got here a little late. But does this include  
17 DOE product covered products? So are we getting  
18 into a double redundant enforcement effort for  
19 certain products?

20 MR. LEMEI: The answer is that -- and  
21 this is a question not about the enforcement  
22 regulations, you're asking a question about the  
23 broader regulatory scheme --

24 MR. MESSNER: Yes.

25 MR. LEMEI: -- which is not the focus of

1 today's workshop, but --

2 MR. MESSNER: Well, but on the violations  
3 and the penalties.

4 MR. LEMEI: Right. So if something is a  
5 violation of the underlying regulations, it would  
6 be subject to an Administrative Penalty. If  
7 there was a situation in the Regulations, both  
8 the Regulations and also Preemption principles  
9 define when an appliance that is regulated by DOE  
10 is not subject to the Appliance Standards, or  
11 when a particular Appliance Standard is or is not  
12 effective. So the answer is that the enforcement  
13 standards look to the core regulations for  
14 whether something is or is not a violation. So  
15 if there is a DOE standard in effect that  
16 preempts the State standard, then that would not  
17 be subject to Administrative Penalty.

18 MR. MESSNER: Okay.

19 MR. LEMEI: But that's a complicated and  
20 fact specific question, it depends on the facts  
21 of the particular case, it depends on the  
22 particular standard, it could depend on whether  
23 it's a marking violation versus a --

24 MR. MESSNER: A what violation?

25 MR. LEMEI: -- a mark -- like failure to

1 mark or label appropriately, as opposed to not  
2 meeting the substantive standard. So it's case  
3 specific.

4 MR. MESSNER: I understand that, so if  
5 it's marking - well, marking actually still would  
6 be - I don't think there's any case where that  
7 would be preempted, but if a company had -- there  
8 would be an enforcement penalty for something  
9 over and above a Department of Energy Regulation,  
10 so is that what you're saying? It wouldn't be  
11 duplicative, it wouldn't be California piling on  
12 to, hey, DOE is enforcing their regulations and  
13 their laws in California, not them coming on and  
14 saying, "Hey, me too."

15 MR. LEMEI: What I'm saying is that if a  
16 particular conduct -- if a California standard is  
17 preempted, that would not be subject to an  
18 administrative penalty, it would not be a  
19 violation of our standards, and the standards  
20 speak to that issue, the core -- 1601 through  
21 1608 speak to that issue in a number of places.

22 MR. MESSNER: So what would be maybe an  
23 example where it wouldn't -- can you think of any  
24 example where it would fall out of -- what  
25 example would there be where there would be an



1 Administrative Penalty for a DOE covered product?

2 MR. LEMEI: Well, so you gave the example  
3 of marking --

4 MR. MESSNER: But there's no markings for  
5 DOE -- well, our products. I mean, there's  
6 Energy Guide labels and things like that, but not  
7 like a battery charger marking or anything like  
8 that.

9 MR. LEMEI: I mean, it's not easy to give  
10 examples -- you're asking me to give an example  
11 in the abstract and that's not easy to do. Any  
12 particular standard for which there's a DOE  
13 standard in effect would need to be analyzed on a  
14 case-by-case basis.

15 MR. MESSNER: Okay.

16 MR. LEMEI: I don't feel like I'm giving  
17 you comfort.

18 MR. MESSNER: No, I'm still trying to  
19 figure out where the hole would be. I don't see  
20 where there would be, if it's a DOE covered  
21 product, it seems pretty cut and dry there  
22 wouldn't be any Administrative Penalty, but maybe  
23 there's something that you're aware of that I'm  
24 not aware of.

25 COMMISSIONER MCALLISTER: It seems like

1 your example, okay, if DOE finds a violation and  
2 hammers on an industry, are we just going to pile  
3 on, at least that's not something that there's a  
4 lot of precedent for, in fact, we're happy to  
5 have DOE help solve common issues and problems  
6 that we have jointly, so I think there's a  
7 certain cooperation that we expect and generally  
8 have with DOE. You know, again, I'm not  
9 committing to anything, I'm just saying what the  
10 reality is.

11 MR. MESSNER: Right, and I understand.

12 COMMISSIONER MCALLISTER: But I think the  
13 obverse, I think you'd call it, is also possibly  
14 maybe something we should think about, which is  
15 that if there's a preempted device that we're out  
16 there doing what we do for 454, and we uncover a  
17 violation, or we detect a violation in the  
18 marketplace of a preempted product, what happens  
19 then? And maybe that's not a 454 specific  
20 question, maybe that's a general process  
21 question, but we probably work with DOE in some  
22 way there. The intent certainly is not to be  
23 duplicative with respect to -- it's not to be  
24 duplicative, it's to just make sure that in  
25 California we have compliance with our Regs,

1 right?

2 COMMISSIONER DOUGLAS: And I'll just add  
3 for any discussion, we do have requirements like  
4 certification of products that are compliant with  
5 standards that we would expect to see continued  
6 compliance with, I mean, that's something that's  
7 typically already done.

8 MR. MESSNER: I see, so if it's  
9 certified, maybe it could be a -- I'm not trying  
10 to minimize it -- paperwork violation on the  
11 certification, certified at DOE, but then you  
12 have to also certify on the database, maybe it's  
13 not on the database, so it could be a DOE covered  
14 product, but it's not on the database, so then  
15 you do envision this enforcement dealing with  
16 that area.

17 COMMISSIONER DOUGLAS: We could, it's  
18 very important that products be in the database  
19 because, as we've talked about making compliance  
20 easy for people, which is really what everybody  
21 wants, for retailers who are trying to see  
22 whether a product is compliant or not, they go to  
23 that database. And so if products are not listed  
24 there, that starts a problem and a potentially  
25 cascading problem. So that's an example I can

1 think of, of an independent state requirement.

2 MR. MESSNER: Okay, that's helpful.

3 Thank you.

4 MR. NUFFER: Thank you. Anyone else?

5 MR. STRAIT: We do have another comment  
6 that was made by chat. Cheryl English in  
7 response to Dick Upton's comment states that,  
8 "Because California law is stipulated on the sale  
9 of a product, a manufacturer cannot indemnify the  
10 retailer when we may not control the distribution  
11 of a product that meets requirements in adjacent  
12 states, but not in California." And she has also  
13 mentioned that if there are any follow-up  
14 comments, she would be glad to respond by chat.

15 MR. NUFFER: Thank you.

16 MR. LEMEI: Yeah, before we move on, in  
17 response to kind of the broader issue of  
18 responsibility, the Regulations do identify any  
19 violation as subject to Administrative Civil  
20 Penalty, but then do go on to call out a few of  
21 the major examples, as John explained. With  
22 respect to the first violation, the sale of a  
23 product that isn't in the database, one important  
24 scenario that this speaks to is a situation where  
25 you have a manufacturer that may not be

1 deliberately putting its product into the stream  
2 of commerce in California, maybe overseas, maybe  
3 in another state, and isn't doing anything  
4 necessarily potentially to reach out to  
5 California, but the product nevertheless makes  
6 its way onto the shelves here. So certainly  
7 there's the situation where the manufacturer is  
8 acting to cause their product to be sold here and  
9 maybe there's a contract, maybe there's an  
10 attempt to indemnify whether or not that works or  
11 not is another question. But also, there could  
12 be a situation where there is no obvious contact  
13 between the manufacturer and the state, and the  
14 Regulations are intended to speak to that  
15 situation, as well.

16 MR. SPLITT: Pat Splitt from Aptech  
17 again. On the last paragraph, it seems you're  
18 saying that if somebody actually perjured  
19 themselves and gave you a false statement, that  
20 you can give them an additional penalty on top of  
21 the 2,500 bucks, and is that additional penalty  
22 limited? Is it a monetary penalty? What is that  
23 additional penalty?

24 MR. LEMEI: It would be a separate  
25 actionable violation and this is to -- yes, the

1 effect of Part 2 is to make it a separate  
2 actionable violation to make a misstatement in  
3 our process. And that is separate from any sales  
4 and it would be subject to the \$2,500 maximum,  
5 which is currently the statutory maximum. And  
6 our perspective is that the submission of a false  
7 statement is itself a violation of the  
8 Regulations and therefore separately actionable.

9 MR. MESSNER: Sorry, that reminded me of  
10 another question. On the \$2,500 per violation,  
11 is there a cap or anything? Normally, there's at  
12 least some type of cap so if you have a \$2,500  
13 violation and a million products, whatever, \$2  
14 billion penalty? I mean, it gets unreasonable at  
15 some point.

16 MR. LEMEI: Well, the cap is -- the  
17 statute establishes up to \$2,500, that's the  
18 current statutory language. What you're speaking  
19 to is, you know, is there an upper limit if  
20 there's a trillion sales.

21 MR. MESSNER: Yeah.

22 MR. LEMEI: We should hold that until we  
23 get to the factors because a number of violations  
24 is a consideration. And just to take it out of  
25 order just briefly, that could cut both ways both

1 in terms of showing that there's been a large  
2 amount of harm potentially, but also if the total  
3 amount when you add it up is unreasonable, that  
4 also is a consideration. And there's other  
5 factors that speak to that. So I would just  
6 encourage you to hold that question until we get  
7 to the considerations.

8 MR. MESSNER: Considerations later, all  
9 right. Thank you.

10 MR. NUFFER: Final call?

11 MR. STRAIT: There is one additional  
12 comment from Kunal Kapoor. He asks, "If products  
13 are in a Department of Energy database, do they  
14 have to be present in a California Energy  
15 Commission database, as well?"

16 MR. LEMEI: That's a question about the  
17 substantive standards, which is not the subject  
18 of today's workshop, but my understanding is,  
19 yes, if it's a covered product.

20 MR. NUFFER: Okay, let's move on to the  
21 next subsection, please. Oh --

22 MR. LEMEI: Pat, did you want to  
23 elaborate?

24 MR. SPLITT: Well, as far as I know, the  
25 only databases you accept are your own are third-

1 party databases that you've approved.

2 MR. LEMEI: Correct.

3 MR. SPLITT: The DOE isn't one of those,  
4 they don't have a database that you've approved.

5 MR. LEMEI: Right, so I understood the  
6 question to be, does it need to be in the  
7 California database if it's a covered product  
8 even if it's also required to be in a DOE  
9 database, and the answer is I believe yes, it  
10 needs to be in a California database or an  
11 approved database. Thanks.

12 MR. NUFFER: Okay, Subsection (b). As  
13 we've just discussed, the maximum penalty set by  
14 statute is \$2,500 per violation. There are seven  
15 statutory factors there and two we've added. And  
16 factors A through G are set forth in statute.  
17 The blue underlying text shows our additions.  
18 We've added language to C and F to provide some  
19 clarity, and C takes into account a pattern of  
20 violating the Standards; F takes into account the  
21 financial condition of a responsible party in  
22 order to avoid undue burden.

23 And the two we've added in their entirety  
24 are H and I. H takes into account a responsible  
25 party's proactivity, and I takes into account a



1 party's cooperation with the Energy Commission.  
2 And as Galen has mentioned, penalties will be  
3 determined on a case-by-case basis taking into  
4 account all of these factors in light of all  
5 relevant facts and circumstances.

6 MR. LEMEI: And if I can just elaborate  
7 on this briefly to provide context, I'm not sure  
8 how many of you have -- all of you have the  
9 regulatory language in front of you, I don't know  
10 how many of you have the statutory language in  
11 front of you. But SB 454 itself codified in  
12 Public Resources Code Section 25402.11(a)(2)  
13 specifies seven factors that the Energy  
14 Commission shall consider in considering the  
15 application of an Administrative Penalty. And  
16 what we've done here is set forth those factors  
17 within our Regulations in order to provide  
18 clarity and in a few cases we have elaborated on  
19 that language to provide clarity, or added some  
20 additional factors that we think are also  
21 important to be considered. Of course, in the  
22 final regulatory language you wouldn't see blue  
23 underlined, but this was presented in this format  
24 to provide clarity to the folks in this room and  
25 the folks attending this online as to what value

1 we are adding to the statutory direction. So I  
2 just wanted to add that. So anything in black is  
3 something that is actually in the underlying  
4 statute, anything in blue is value added from the  
5 Energy Commission to provide clarity.

6 MR. NUFFER: Pat.

7 MR. SPLITT: Pat Splitt again. I'm  
8 looking through this and I don't see anywhere in  
9 here where you actually spell out the \$2,500  
10 limit.

11 MR. LEMEI: No, we reference the statute,  
12 the penalty -

13 MR. NUFFER: It's that first paragraph  
14 that says up to a maximum --

15 MR. LEMEI: Yeah, up to the maximum  
16 amount provided by Section 25402.11. That  
17 maximum is \$2,500. We didn't want to have a  
18 situation where if for whatever reason the  
19 statute changed and we had something different in  
20 our Regulations that we would need to change, so  
21 rather than state it separately as a regulatory  
22 requirement, we just referenced the statutory  
23 maximum.

24 MR. SPLITT: Okay, but the statutory  
25 maximum, is that \$2,500 total? Or per instance?

1 Or -

2 MR. LEMEI: Per violation.

3 MR. SPLITT: And so each -- it could be  
4 that if 100 pieces of equipment were sold, each  
5 one would be a violation?

6 MR. LEMEI: Yes.

7 MR. SPLITT: Okay.

8 MR. NUFFER: Anyone else in the audience?  
9 Yes?

10 MR. LINSTONE: I'm Clark Linstone with  
11 the American Lighting Association and also  
12 representing Lamps Plus retailer in California.  
13 And I'm not sure necessarily this is the right  
14 section to make this comment, but it is a concern  
15 that we've discussed, and that is one of the  
16 goals is to have a level playing field and we  
17 very much support that. But exactly where does  
18 Internet retailing and companies that don't have  
19 a presence in California -- how are they brought  
20 into this that truly this becomes a level playing  
21 field? Or is it just going to be level for  
22 California companies, for Southern California  
23 companies, but potentially a disadvantage for  
24 players, bad actors, whatever you want to call  
25 them that are offering for sale in the California

1 market product? And that's why I'm saying, I'm  
2 not sure necessarily this is the section, but I  
3 think we would welcome some comments as to how  
4 that might be regulated.

5 MR. LEMEI: Clark, you raise a good  
6 point. And I'm not sure that this is the right  
7 section for that, it might have been (a), it  
8 might have been a holistic question. I think we  
9 can speak to it at least briefly now. The  
10 Regulations do not specifically and separately  
11 speak to Internet sales. That said, certainly  
12 products can be sold or offered for sale,  
13 certainly sold in California through the  
14 Internet, and those sales in California would be  
15 within I think the language of -- probably this  
16 falls under (a) in terms of what is a violation.  
17 So a sale in California on the Internet could  
18 absolutely be a sale in California. These  
19 Regulations do not independently speak to that,  
20 there is a broader conversation within the state  
21 right now in terms of how Internet sales are  
22 going to be regulated, are going to be taxed, and  
23 I think that that body of law could well be  
24 relevant to substantiating that a sale on the  
25 Internet occurred in California. But the short

1 answer to your question is, yes, sales on the  
2 Internet, we view them as within the ambit of  
3 their Regulations, as written.

4 MR. LINSTONE: So you would envision any  
5 enforcement actions would also incorporate  
6 enforcement actions against non-California  
7 entities without a presence in California?

8 MR. LEMEI: I think that sales on the  
9 Internet are within the ambit of the Regulations  
10 as written, but the way you frame the question, I  
11 mean, your hypothetical is an out-of-state entity  
12 without contacts in California, I think we all  
13 know that this is and has been a complicated  
14 question, and it would need to be analyzed on a  
15 case-by-case basis and we would need to look to  
16 the body of relevant authorities to determine  
17 whether or not a particular sale is in fact a  
18 sale within California.

19 MR. LINSTONE: Okay, so you're saying  
20 that you'll be looking at that and with the goal  
21 of having a truly even playing field so  
22 California businesses and retailers are not put  
23 at a disadvantage in terms of having to compete  
24 with non-compliant product that is coming from  
25 outside the state?

1           MR. LEMEI: I mean, I should look to our  
2 Commissioners to answer the policy question of  
3 how the Energy Commission will implement its  
4 Regulations, but from a legal perspective I think  
5 the Regulations give the Energy Commission the  
6 tools to assess a violation at least in some  
7 instances of Internet sales. Whether a  
8 particular case constitutes a sale in California  
9 or not, depending on the facts of that particular  
10 case, could be a more complicated or a less  
11 complicated question.

12           MR. LINSTONE: It's a very important  
13 topic to us and our members.

14           MR. LEMEI: Right.

15           MR. LINSTONE: He was asking how you  
16 would recognize Internet sales, and I think  
17 that's part of the challenge, how much  
18 noncompliant product could potentially be coming  
19 into the state. And what we see is just year  
20 after year significant growth Internet sales, so  
21 what used to be maybe a relatively small impact,  
22 the impact of that is growing year after year, so  
23 it does need to be addressed.

24           MR. LEMEI: So the reality is that a  
25 number of the major Internet sellers do in fact

1 have contacts in California. Those sales are in  
2 fact taxed subject to California sale or use tax.  
3 I think in those situations, it could be more  
4 straightforward in demonstrating that a sale was  
5 made in California. In situations where those  
6 facts are absent, it might be more difficult.  
7 But as I sit here, I can't in the abstract offer  
8 an opinion as to what every - you know, how the  
9 law would apply, this complicated and emerging  
10 area of law would apply to any particular factual  
11 scenario.

12 COMMISSIONER DOUGLAS: So I will just  
13 step in and say briefly that the drafting of the  
14 proposed Regulations to cover sales in California  
15 and, as Galen I think has pretty clearly said, to  
16 endeavor to include Internet sales that are sales  
17 in California is our intent. I think it's  
18 important for the reasons that you've discussed  
19 and we agree with those reasons, that it is part  
20 of level playing field. That said, as Galen has  
21 said, this is in part a broader conversation, so  
22 I think that we are doing what we can do within  
23 the scope of the Regulations to address that.

24 MR. LINSTONE: Thank you.

25 MR. NUFFER: I might also say, too, that

1 normally we have a market survey contract and  
2 we're going to have a new contract soon, and the  
3 consultant we hire to survey the market will look  
4 at online and catalogue retailers, as well as  
5 stores in California. So we're looking at the  
6 whole range of sales in California. And we also  
7 have typically a testing contract where we can  
8 buy and test products, so we can find out whether  
9 appliances meet the standards, or whether they're  
10 certified or not. Does that help a little bit?

11 MR. LINSTONE: It does. Thank you very  
12 much.

13 MR. SPLITT: It's Pat Splitt again from  
14 Aptech. Two things, one, if there's somebody  
15 from outside the state that is selling this  
16 equipment, the actual violation is because it  
17 didn't meet our listing requirements and  
18 certification requirements and the manufacturer  
19 is still liable, then, he's the one that should  
20 have done that. So even if you can't  
21 specifically find this person that is hiding in  
22 some college dorm someplace in Oregon, if this  
23 equipment is sold in California and it has a  
24 violation, it's the manufacturer that is still  
25 liable and you can go after him. And then I



1 suspect the manufacturer, then, will go after  
2 this person and tell him to stop selling this  
3 equipment in California. So it's not that you  
4 can't go after people because of this. And also,  
5 as to how you can discover this, the Commission  
6 has one database of regulated appliances, but  
7 it's actually enforced by two different groups,  
8 the appliance group regulates these appliances as  
9 far as when they can be sold. The Building  
10 Standards Group basically regulates the same  
11 appliances, but they regulate when it can or  
12 cannot be installed. So somebody is still  
13 supposed to be checking to see whether this  
14 installed equipment met the requirements, so if  
15 at that point they discover that it doesn't, then  
16 it should get back to the appliance people that,  
17 well, then they can say, "Who sold it?"

18 MR. LEMEI: You raise a good point that  
19 there is an intersection between our Building  
20 Standards and our Appliance Standards.

21 MR. NUFFER: Any other comments?

22 MR. MESSNER: Is this the right place to  
23 talk about the cap? Okay, so let's talk about  
24 the cap. So \$2,500 per violation, a trillion  
25 products is an extreme example, but there should

1 be some type of cap, even in federal level  
2 enforcement, you have a cap, otherwise it's open  
3 for heavy handedness by the government to come  
4 after someone and say, "Hey, we've got a one  
5 trillion dollar penalty hanging over your head."  
6 And regardless of the realities and all the  
7 minimizations in there, the prosecutors can go in  
8 there and a very aggressive prosecutor will go  
9 after and throw that one trillion dollar max  
10 penalty around. And it's seen in enforcement in  
11 other areas, so there's CPSC and others, there's  
12 a cap on there to prevent that abuse from a  
13 government prosecutor.

14 MR. LEMEI: We, of course, will be  
15 benevolent in all things that we do at the Energy  
16 Commission. The Regulations speak to this issue,  
17 the current language speaks to this issue through  
18 the application of the broad factors, but the  
19 current language does not include a hard cap. I  
20 think it could be challenging to figure out how  
21 to draw that line in regulatory language in a way  
22 that fits all cases, but if you have an idea of  
23 what such language might look like, I would  
24 encourage you to submit it through comments.

25 MR. MESSNER: Okay, we'll do that. There

1 are some examples out there that people are able  
2 to do it, so... Thank you.

3 MR. NUFFER: Thank you. Any other  
4 comments online?

5 MR. STRAIT: We do have some comments by  
6 chat. James Calder asks, "Is it my understanding  
7 that if one model of a device was sold 20 times  
8 in California, would this mean a maximum of  
9 \$50,000?"

10 MR. LEMEI: Yes.

11 MR. STRAIT: Oliver Stanbury asks, "For  
12 Section (b)(2)(F), what extent of burden is  
13 undue?" Where we mention in the Regulations to  
14 avoid undue burden, I believe is what he's asking  
15 about. How do we define "undue"?

16 MR. LEMEI: You're putting an awfully  
17 fine point on our language. The concept of undue  
18 burden speaks to the notion that the penalty is  
19 disproportionate or could have too great an  
20 effect on the company, it's not a quantitative  
21 threshold, it speaks to an idea. So that  
22 language gives the Commission the ability to  
23 consider in cases where it is appropriate and  
24 applicable, and where the responsible party has  
25 offered information to make the case that a

1 certain level of fine would have too great an  
2 impact.

3 MR. STRAIT: James Calder also asks,  
4 "Does the CEC have the legal power to fine a  
5 company outside of California? And how can a  
6 Manufacturer be targeted if they have no legal  
7 presence in the USA, let alone California?"

8 MR. LEMEI: In order to -- this is  
9 actually a question about jurisdiction, personal  
10 jurisdiction over a company, and the Energy  
11 Commission would need to establish personal  
12 jurisdiction over a company, so again it depends  
13 on -- and that could be established by any range  
14 of conduct on the part of an out-of-state entity.  
15 But I think that at some level if an out-of-state  
16 entity in fact has no contact with California,  
17 and that can be established, or that contact  
18 can't be established, then that could present in  
19 certain circumstances a barrier to enforcement.  
20 But conduct to offer a product for sale in  
21 California or to put it in the stream of commerce  
22 in California could establish contact and  
23 jurisdiction.

24 MR. NUFFER: Yes.

25 MR. UPTON: If you're hearing --

1 MR. NUFFER: And this is Dick Upton.

2 MR. UPTON: Dick Upton, President of the  
3 American Lighting Association. You're hearing a  
4 repeat situation from two national trade  
5 associations and I think you do have to put a  
6 very fine point on the law and what you're trying  
7 to achieve at this time. If you don't define it  
8 in a workshop where you can get some buy-in,  
9 where are you going to define it?

10 MR. LEMEI: Are you speaking about a  
11 particular --

12 MR. UPTON: Yeah. You know, the  
13 appliance people may be talking about somebody  
14 buying a lot of refrigerators for a store could  
15 be 50 or 100; if you're talking about a lighting  
16 fixture in a store, it could be 10,000 that are  
17 bought by a company for distribution across  
18 multiple retail outlets. That's got to be  
19 defined. It can't stand out as an open wound.  
20 When I saw you're saying \$2,500, and \$2,500, that  
21 seemed reasonable.

22 MR. LEMEI: Uh-huh.

23 MR. UPTON: But if you're going to put a  
24 multiplier times two, three or four, I think it  
25 becomes unreasonable.

1           MR. LEMEI: Times two, three or four?

2           MR. UPTON: Yeah.

3           MR. LEMEI: I'm sorry, what multiplier

4 are you --

5           MR. UPTON: I'm saying if you've got five

6 items on the shelf or 500 items, or 50,000 items

7 on the shelf, and you've got to determine how far

8 out you're going to extend \$2,500. What's the

9 multiplier going to be?

10          MR. LEMEI: Uh-huh.

11          MR. UPTON: I think what you're trying to

12 do is keep people within compliance of the law

13 and to protect the California environment and

14 California consumers and a level playing field

15 for business and the jobs that are created. But

16 to say you're going to look to this to be the

17 funding mechanism for the California Energy

18 Commission, I don't think this is your intent by any

19 stretch of the imagination. But what you're

20 trying to do is to penalize someone who is a

21 player who needs to have a penalty. I would

22 think there could be publicity that would be

23 attendant to that which could be more expensive

24 to them in reality than the fine. But to go

25 beyond a reasonable number of dollars, I think,

1 is a mistake on your part and I think it will  
2 cause a tremendous backlash and be  
3 counterproductive to you in the worst case  
4 situation.

5 MR. LEMEI: The intent of the factors,  
6 both those articulated by the Legislature and the  
7 Energy Commission's interpretation of those  
8 factors articulated by the Legislature, I think,  
9 is to avoid a situation where the fine is  
10 unreasonable and, in particular, the undue burden  
11 concept is to avoid a situation where the fine is  
12 unreasonable, as is the consideration of the  
13 number of violations. Of course, what is  
14 reasonable in one situation and for one company  
15 might be very different from what is reasonable  
16 for a different company and a different  
17 situation, and the Regulations are designed to  
18 give the Energy Commission the tools to make that  
19 determination.

20 MR. UPTON: I don't have any concerns  
21 about the Energy Commission and what you're  
22 trying to do. I've been here too many times and  
23 dealt with too many of the staff, and you want to  
24 be reasonable. But if you don't define that now,  
25 I think the concern that what's going to be

1 hanging over everybody's head is not going to be  
2 positive and it's certainly not going to be  
3 positive for job expansion in the state. I'll  
4 tell you that as an economic developer, as a  
5 Chamber Executive for 30 years.

6 MR. LEMEI: So I understand you to be  
7 making essentially the same point that some sort  
8 of a cap on the multiplier might be -

9 MR. UPTON: Some aspect of limitation  
10 needs to be put on the program because it no  
11 longer becomes a penalty, it becomes a  
12 punishment.

13 MR. LEMEI: Right.

14 MR. UPTON: And that's not what you need,  
15 nor what you're trying to intend, and I'm  
16 especially pleased that the Commissioners are  
17 here to hear the dialogue, as well. Thank you.

18 MR. LEMEI: So, again, I think we would  
19 appreciate, to the extent that you have specific  
20 language that you think makes sense, I think we'd  
21 appreciate that to be submitted through comments.

22 MR. UPTON: Let me take one other thing.  
23 Large companies need protection, too. I can  
24 understand somebody saying, well, let's look at  
25 that, the balance sheet and somebody has got a



1 \$500 million or a billion dollar company, and  
2 somebody else has got a two million dollar  
3 company, the vast majority of our members are  
4 going to be in that smaller category, but we have  
5 larger ones, as well; their intent and  
6 operations, I find, is as good as anybody else's.  
7 But just because they've got larger resources  
8 doesn't mean they ought to have a usurious  
9 penalty. Thank you very much.

10 COMMISSIONER DOUGLAS: So I'll just -- I  
11 appreciate your comments. It's very helpful to  
12 us to hear them from you directly. I will note  
13 that in (F), the blue language which we added,  
14 clarifies that the violators' assets, liabilities  
15 and net worth would be considered only in one  
16 direction, in other words to reduce a penalty if  
17 they're able to and wish to make a showing of  
18 financial burden, that might cause us to reduce a  
19 penalty. They're certainly not -- and we put  
20 that language in there very deliberately,  
21 something we'd look at to go after a larger  
22 penalty. So I just wanted to address that  
23 concern. I understand your broader point.

24 MR. UPTON: Thank you.

25 MR. NUFFER: Thank you. Anyone else?

1 Online?

2 MR. STRAIT: I'm not seeing anyone that's  
3 raised their hands. There aren't any additional  
4 comments submitted by chat.

5 MR. NUFFER: Okay, let's move on to the  
6 next subsection then, please, (c), Notice of  
7 Violation. The Notice of Violation is  
8 essentially a summary of our allegations and is a  
9 prerequisite for an Administrative Proceeding to  
10 impose a penalty. It's a prerequisite. Our  
11 first communication with a responsible party will  
12 not be the Notice of Violation. The first step  
13 will always be an investigation. And parties we  
14 suspect that may have violated the Appliance  
15 Efficiency Standards will always be given  
16 opportunities to provide information and share  
17 facts and to begin a dialogue with us.

18 Are there any questions or comments  
19 regarding this one? Yes, Clark?

20 MR. LINSTONE: Clark Linstone. Just a  
21 quick comment regarding just notification, if it  
22 could be sent Certified or some other way,  
23 there's obviously been receipts and the  
24 circumstances were just the mail got lost and no  
25 one was informed, and then it looks like bad

1 intent, so to speak, for not responding. So if  
2 that could be added in and a couple letters, and  
3 maybe regular mail as well as Certified or  
4 something just to ensure that the notification is  
5 in fact received.

6 MR. NUFFER: Sure. Thank you. Anyone  
7 else in the audience?

8 MR. SPLITT: It's Pat Splitt again. I  
9 had a long drive, so I'm going to make it worth  
10 my while. I just wanted -- now I forgot what I  
11 was going to say (laughs). What were we talking  
12 about here? Well, it'll come back to me.

13 MR. NUFFER: The Notice of Violation.

14 MR. LEMEI: You'll have an opportunity.

15 COMMISSIONER DOUGLAS: Talking about  
16 Certified Mail -- most recently.

17 MR. SPLITT: Oh, the violation. Well, I  
18 spoke before about the fact that the Building  
19 Standards Regulations actually are where a lot of  
20 these violations are going to get caught when  
21 somebody actually installs this equipment, so I  
22 don't know whether it should be actually in this  
23 particular document, but somewhere you have to  
24 close the loop and get some instructions to the  
25 Building Standards people that when they find one

1 of these violations, that somehow they  
2 communicate it back to the Appliance group, or  
3 else you'll never know about it. And that's  
4 where you're going to find out where most of the  
5 problems are.

6 MR. NUFFER: Thank you.

7 MR. LEMEI: That's a good point, I mean,  
8 that's beyond the scope of the 1609 Regulations,  
9 but there are various paths by which the Energy  
10 Commission can become aware of a potential issue.  
11 And I think that you make a good point, that the  
12 Building Standards is an important context where  
13 this comes up frequently.

14 MR. NUFFER: Anyone online, Peter?

15 MR. STRAIT: Yes. Kunal Kapoor asks, "If  
16 reported energy value is in question and the CEC  
17 investigates, does the investigation include  
18 testing? If testing will be done, who will be  
19 doing the testing?"

20 MR. LEMEI: That's established by 1608.  
21 I don't have the specific reference in front of  
22 me.

23 MR. STRAIT: All right. I would say, as  
24 someone familiar with that language, the  
25 investigation may include testing. If testing is

1 to be performed, it may be done by the testing  
2 contractor that we generally have for independent  
3 testing, but I believe this would probably be a  
4 case-by-case basis.

5 MR. NUFFER: Anyone else, Peter?

6 MR. STRAIT: I am not seeing anyone else  
7 that has raised their hand to comment and I have  
8 not seen -- oh, Kunal Kapoor has responded to  
9 add, "Will the Manufacturer be allowed to witness  
10 the test?" And again, I would say that will  
11 likely be a case-by-case determination.

12 MR. LEMEI: And again, these questions go  
13 to the existing Regulations in 1608, not so much  
14 to the enforcement process that we're adding  
15 today. The testing process is set forth in the  
16 existing language of 1608.

17 MR. NUFFER: And we would be happy to  
18 talk with the person off line as often and as  
19 much as he needs.

20 MR. STRAIT: Certainly. And I think,  
21 also, there would be a difference between a test  
22 that we perform that shows that a product is  
23 compliant and the issue is merely one of  
24 certification, and a test that we performed where  
25 we discover that an appliance is noncompliant.

1 So again, there's probably an extended  
2 conversation. If anyone else has a similar  
3 question, that's a conversation that could be had  
4 off line about the existing Regulations.

5 MR. NUFFER: Any other questions about  
6 the Notice of Violation? Okay, let's go on to  
7 the next one, 1609(d), Settlement. This is very  
8 short, but one thing I do want to say is that we  
9 anticipate that most cases will be resolved  
10 through settlement. Do we have any questions or  
11 concerns about this? Comments about this  
12 section?

13 MR. LEMEI: I mean, I'll just add that  
14 this is essentially a statement of what would  
15 have been true, whether or not we stated it, and  
16 that is that the Energy Commission, any agency  
17 has the ability to settle and that's established  
18 by the APA and the authority under the APA is  
19 fairly broad.

20 MR. NUFFER: The California  
21 Administrative Procedures Act.

22 MR. LEMEI: Oh, thank you.

23 MR. NUFFER: Any questions, comments?  
24 Peter?

25 MR. STRAIT: I do not see any raised

1 hands and I have not received any comments by  
2 chat.

3 MR. NUFFER: Let's move on to the next  
4 one then, please. And this slide just shows the  
5 sections that Galen just referred to. The  
6 Commission may enter into a Settlement Agreement  
7 at any time during this process in addition to or  
8 in lieu of a monetary penalty. The Settlement  
9 Agreement may include non-monetary provisions.  
10 For example, a responsible party might agree to  
11 implement measures to prevent future violations  
12 such as training staff or adopting new internal  
13 policies or procedures. However, different facts  
14 and circumstances will require different  
15 approaches. Nevertheless, our decision making  
16 will be guided by the relevant facts and  
17 circumstances of a case in light of those nine  
18 factors we discussed previously. So I guess  
19 there are no more questions about this particular  
20 Settlement.

21 Let's go on to 1609(e), Administrative  
22 Proceeding. The next two slides cover this one  
23 subsection, Administrative Proceeding. Absent  
24 the Settlement, this is the process we go through  
25 if we don't settle. And as Galen just said, the

1 process is consistent with the California  
2 Administrative Procedures Act.

3 MR. LEMEI: Yeah, let me elaborate on  
4 this one briefly. For those who are familiar  
5 with the Energy Commission's process, you may see  
6 something or notice something a little bit  
7 different about this, and that is that the  
8 Administrative Proceeding for Appliance  
9 Enforcement pursuant to the statute complies with  
10 the formal adjudicative provisions of the  
11 Administrative Procedures Act. For those who are  
12 really wonky, that means we're in Chapter 5  
13 instead of Chapter 4.5. Generally, the  
14 Commission's proceedings are conducted not in  
15 accordance with the formal provisions. The main  
16 difference there is that it entails the retention  
17 of an Administrative Law Judge or working with an  
18 Administrative Law Judge and the proceeding can  
19 either happen at the Commission or at the Office  
20 of Administrative Law.

21 MR. STRAIT: As a note, that was not a  
22 fire alarm, that was somebody leaving a nearby  
23 door without scanning their card, so that's  
24 nothing to be afraid of.

25 MR. LEMEI: Thanks, Peter. So the



1 Regulations acknowledge that there's a slightly  
2 different process under this compared with, for  
3 example, our power plant siting cases, or the  
4 complaint proceedings that we have in other  
5 contexts here at the Commission. That said, I  
6 think that the similarities are more important  
7 than the differences as it still is ultimately a  
8 Commission decision, it just includes the  
9 involvement of an Administrative Law Judge. I  
10 just wanted to flag that and explain.

11           And in terms of Settlement, again,  
12 Settlement could happen before, it could happen  
13 during, it could happen after, this is just the  
14 process; as long as the case is live, this is the  
15 way that the process will proceed. And again,  
16 this essentially references the process set forth  
17 in the Administrative Procedures Act, so I would  
18 refer you to the formal provisions of the APA,  
19 Sections 11500, which elaborate on how formal  
20 proceedings are conducted in California.

21           MR. NUFFER: Do we have any questions  
22 from the audience, or comments about these two  
23 particular slides in this section? Peter,  
24 anybody online?

25           MR. STRAIT: I do not see any raised

1 hands and no comments or questions have been  
2 received by chat.

3 MR. NUFFER: Okay, let's move on to the  
4 last two subsections of Section 1609, (f) and  
5 (g). Other Enforcement Procedures is pretty  
6 direct. The Executive Director and the Energy  
7 Commission may take other such actions as are  
8 authorized by statute and Commission Regulations  
9 to address or prevent any act or omission  
10 addressed under this article. And that refers to  
11 Section 1601 through 1608 of the California Code  
12 of Regulations.

13 (g) is about Judicial Review. The path  
14 for Judicial Review was specified in Senate Bill  
15 454 and we're simply citing it here.

16 MR. LEMEI: And if I can just add again,  
17 these two provisions don't really add a lot of  
18 value. These would both be true whether or not  
19 we specified it. It's just a reminder of what  
20 should probably be obvious.

21 MR. NUFFER: Any questions or comments  
22 from the audience?

23 MR. LEMEI: Oh, you had the next slide,  
24 okay. Those are the provisions that are  
25 referenced in the existing Warren-Alquist Act

1 that are referenced by SB 454. Oh, and in terms  
2 of other actions, the most obvious is using the  
3 Attorney General; but, again, any other action  
4 that is consistent with Title 20 in the Warren-  
5 Alquist Act, we retain discretion to try to solve  
6 problems in an expeditious manner.

7 MR. NUFFER: Any questions, Peter,  
8 comments?

9 MR. STRAIT: I do not see any raised  
10 hands and I have not received any questions by  
11 chat.

12 MR. NUFFER: No one in the room? Okay,  
13 let's go to the next slide, please. This is our  
14 Enforcement process. It's a visual  
15 representation and we're probably going to be  
16 refining this to make it clearer. The one  
17 important aspect of this is that we anticipate  
18 settlement, and that settlement can happen any  
19 time during the process. Typically, up in the  
20 left-hand corner, we're made aware of a violation  
21 either through a market survey or from our own  
22 work, or from competitors. We then do our own  
23 investigation and enter into discussions with  
24 responsible parties so that we can find out the  
25 facts and circumstances of the case. And

1 hopefully with the dialogue, we can come to  
2 compliance and a settlement. If that doesn't  
3 happen, then we would send out a Notice of  
4 Violation and our hope would be that the  
5 responsible party could comply with that Notice  
6 of Violation and settle. If that didn't happen,  
7 we could either hold an Administrative Proceeding  
8 or refer the matter to the Attorney General. Our  
9 preference is the Administrative Proceeding where  
10 the Commission would make a decision. And I want  
11 to reiterate that settlement can occur at any  
12 point in that process. Are there any questions  
13 about that? Comments? Yes.

14 MR. LEMEI: And while you're walking up,  
15 I'll just acknowledge that, you know, any visual  
16 representation is imperfect, but this is intended  
17 to just at least demonstrate the idea of the  
18 order of operations through a diagram.

19 MR. MORENO: Good morning. Eddie Moreno  
20 with Sierra Club California. I have a question  
21 about which staff member or office is directly  
22 responsible for overseeing the enforcement? Is  
23 that still within the Appliance Efficiency  
24 Program or --

25 MR. NUFFER: Yeah, it's the Efficiency

1 Division, and within that Division it is the  
2 Appliances and Existing Buildings Office.

3 MR. MORENO: Thank you.

4 MR. NUFFER: Yes, Dick.

5 MR. UPTON: Dick Upton with the American  
6 Lighting Association. We feel very strongly that  
7 the running of this program needs to stay with  
8 the Commission. There have been entities and  
9 programs in the state where that's not been the  
10 case, and our Association stepped up to try to  
11 help the manufacturers. But when those things  
12 happen, they've been nothing but a money mill for  
13 people to go out and try to prosecute and get  
14 money, and we feel a lot more comfortable with  
15 you people running this program than anybody  
16 else. And if you need more staff and you need  
17 financing, we would be pleased to go with you to  
18 the Legislature and to try to get that for you.  
19 But I think trying to figure out if you can run  
20 it within your own operations today is an  
21 intelligent way to go forward, but we really very  
22 strongly feel that all of this program needs to  
23 be held within the structure and the guidance of  
24 the Commissioners themselves.

25 MR. LEMEI: We appreciate that. Thank

1 you.

2 COMMISSIONER MCALLISTER: So, yeah, we  
3 appreciate that and I want to reiterate, the  
4 Legislature in this case felt the same way and  
5 passed a law that said we're going to complement  
6 the regulatory authority with some enforcement  
7 authority. They did look at some models in other  
8 agencies, determined, I think, that technically  
9 it made sense to be here. Obviously the  
10 Appliances and Existing Buildings Office will  
11 work closely with our Legal Office on any given  
12 case, so that's why you see counsel and staff  
13 sitting next to each other presenting here today,  
14 it's a reflection of the way the effort would go.  
15 And our overarching interest, I think everybody  
16 acknowledges and rightly so, that it's simply  
17 that our efforts to influence and through our  
18 regulatory authority, and get the results that we  
19 need that voters over and over again approved and  
20 our Legislature is on board with, and in the  
21 grand context of a clean energy economy is where  
22 we are going. So that's our overriding  
23 compelling interest, it's certainly not punitive  
24 funding of Energy Commission efforts, really,  
25 with outsized penalties. Having said that, you

1 know, resources to implement this additional  
2 responsibility that we've been given were not  
3 part of SB 454, and so we are actually having to  
4 sort of rearrange the shelves a little bit to  
5 make sure we have it covered, so that  
6 conversation may well happen in the future,  
7 depending on what the actual workload turns out  
8 to be, but we don't know that yet, so....

9 COMMISSIONER DOUGLAS: Yeah, I'll just  
10 add I also appreciate very much your comment.  
11 It's our intent to, in fact, have this run as an  
12 Energy Commission program and that's what the  
13 Legislature set up. I was going to say this in  
14 my closing comment, but I'll say it now, and  
15 again in my closing comment, our goal is  
16 compliance. Our goal is to realize the benefits  
17 of the Appliance Efficiency Standards here in  
18 California and have a level playing field and  
19 have the energy savings and the environmental  
20 benefits we get from our Standards. So we  
21 appreciate very much your offer and your thinking  
22 about resources. I think that resources to run  
23 an enforcement program within the Efficiency  
24 Division is one issue and it's something that of  
25 course we are thinking about in terms of how we

1 do this, how do we do it efficiently.

2 Another area where resources are probably  
3 in some sense even more important and where you  
4 can help directly without really even needing to  
5 take the step of going to the Legislature is in  
6 compliance assistance and getting the word out  
7 and messaging. And we know that you do that with  
8 your member entities, but this is something where  
9 we would greatly value the input and thoughts and  
10 help of everyone in this room in doing that kind  
11 of outreach so that we have frankly less  
12 enforcement to do and more compliance, that's  
13 really what we would like to see.

14 MR. NUFFER: Yes?

15 MR. LEMEI: And I should just say what  
16 may already be obvious, and the next slide I  
17 think would be public comments, it might make  
18 more sense to leave the diagram up rather than  
19 the public comments, but I think at this point it  
20 is appropriate to talk about the full package.

21 MR. FERNSTROM: I'm Gary Fernstrom  
22 representing the Pacific Gas & Electric Company,  
23 San Diego Gas & Electric Company, and the  
24 Southern California Gas Company. Southern  
25 California Edison may support these comments, but



1 as of the moment, they haven't authorized it.

2 What I wanted to do was make a public comment at  
3 the end of the proceeding. Am I out of order or  
4 -- okay.

5 I'd like to make three quick points. I'd  
6 like to thank the Commission and staff first of  
7 all for your thoughtfulness in determining how to  
8 implement this new authority you have, I think  
9 it's wonderful that you're getting a broad range  
10 of public input and giving it thorough  
11 consideration.

12 I'd like to recommend that you  
13 particularly think about how to utilize this  
14 authority with respect to contractors installing  
15 equipment. That issue was raised previously by  
16 others, but in the case of swimming pool pumps  
17 and motors, for example, only the contractor  
18 selling the equipment to the customer may be  
19 aware of whether compliance is being achieved or  
20 not. And I don't know that the CEC's Appliance  
21 Survey necessarily goes to work done by  
22 contractors, so I'd like to ask you to give some  
23 consideration to that.

24 Also, in the future when the Department  
25 of Energy's Regulation affecting regional

1 standards for HVAC equipment comes into effect,  
2 it will be necessary at the point of installation  
3 to determine whether a product is being installed  
4 within California and whether or not it is  
5 compliant. So an example of that, the wholesaler  
6 is in Carson City, Nevada, sells to a contractor  
7 in Truckee, and we don't know whether the product  
8 was installed in California or Nevada.

9           The second point I'd like to make is it's  
10 important that products be adequately marked in  
11 order to determine their compliance with the  
12 Regulations, particularly with respect to the  
13 date of manufacture. Recently, Appliance  
14 Regulations have been changing more frequently  
15 than in the past and to cite one product, for  
16 example, light bulbs, we don't really see the  
17 date of manufacture easily; in fact, in some  
18 cases it's difficult if not impossible to find  
19 out the date of manufacture, so it's hard to tell  
20 whether they're compliant with the Regulation or  
21 not.

22           And lastly, we'd like to better  
23 understand what your expectations are of us with  
24 respect to voluntary rebate programs and assuring  
25 compliance. We frequently cite Energy Star or

1 Department of Energy Minimum Energy Efficiency  
2 Performance Levels for eligibility for products  
3 that we provide rebates for. We'd like to make  
4 our rebate programs as simple and easy and user  
5 friendly as possible, so having to check against  
6 multiple databases to determine with certainty  
7 eligibility may present a challenge for us. So  
8 if you could help us understand your expectations  
9 there, that would be great. Thank you.

10 MR. NUFFER: Thank you.

11 COMMISSIONER MCALLISTER: Thanks, Gary.  
12 I really appreciate your being here. I guess I  
13 had a couple of suggestions for follow-up  
14 conversations between you and staff. Certainly  
15 one of them is to understand the administration  
16 of the appliance rebates to look at what the  
17 transaction costs are, obviously we don't have  
18 lots of layers of admin there and just increased  
19 cost for no good benefit, but also possibly there  
20 is a way to do that easily with each rebate and  
21 application, you know, in the processing. And  
22 then I guess I thought I might have heard there  
23 that you felt like there might be some places  
24 where it's not clear whether it's Building Code  
25 that needs to be applied, or whether it's

1 Appliance Efficiency Standards that sort of are  
2 in play in a given project like, say, an HVAC  
3 installation or something, and maybe there's a  
4 conversation to understand how the contractor  
5 community applies Building Code and how that sort  
6 of overlaps with some of what we're doing in  
7 Title 20 in this proceeding, or this process. So  
8 I might have missed something there, but an HVAC  
9 replacement, for example, is both subject to  
10 Building Code and maybe eligible equipment issues  
11 on the appliance front, so maybe you could  
12 explain that a little bit more.

13 MR. FERNSTROM: I think the issue is what  
14 mechanism you may choose to use in the field to  
15 determine compliance. So some of these Appliance  
16 Efficiency Regulations spill over in a manner  
17 where maybe the Building Official is in the best  
18 position to determine compliance, and that would  
19 be the HVAC example, for example. In the case of  
20 the pool pump and motor example, very commonly  
21 Building Permits are not taken out for change-out  
22 of these, so the Building Department is not in a  
23 position to really monitor this and I think it  
24 would be useful if the CEC were to establish some  
25 sort of an audit or survey effort to spot check

1 what's being done in order to be able to monitor  
2 the activities of contractors who may not take  
3 out Building Permits.

4 COMMISSIONER MCALLISTER: So maybe that  
5 conversation, then, is about scoping out the  
6 survey work in the contractor that we would put  
7 on that.

8 MR. NUFFER: And also, as we develop an  
9 outreach and education program, your help would  
10 be appreciated.

11 MR. FERNSTROM: So thank you so much. I  
12 forgot to mention that a couple, three years ago,  
13 the utilities, finding an opportunity to enhance  
14 compliance with the Regulations, developed a  
15 Codes and Standards Outreach and Education  
16 Program to try and help make contractors and  
17 others aware of the requirements. So we'll  
18 continue to work with you with respect to  
19 leveraging our collective programs for the best  
20 benefit.

21 COMMISSIONER MCALLISTER: I really  
22 appreciate that and that's a great infrastructure  
23 that we already have in place in the state that  
24 covers much of the state that we ought to take  
25 advantage of. We're getting a little bit far

1    afield, I think, from the Regulations themselves,  
2    but finally I would just say, you know, plug  
3    loads in California are a frontier of growing  
4    importance in terms of getting to the end result  
5    that we all want, for the energy and  
6    environmental benefits that we're looking for.  
7    And so getting -- it's across the board in  
8    existing buildings and in new buildings, lots of  
9    opportunities for efficiency, lots of new  
10   marketplaces that businesses that are ripe for  
11   development and scale-up; you know, lighting  
12   certainly is one of those primary frontiers. And  
13   so we're all very excited to get a lot of new  
14   technology out there and want to make sure that  
15   it is done with the least amount of friction that  
16   we can bring to it. Anyway, just trying to put  
17   out a little bit of a point on how important this  
18   is.

19               MR. NUFFER: Thank you, Commissioner.  
20   Other comments?

21               MR. MESSNER: Just one comment on the  
22   database and the compliance, Commissioner  
23   Douglas, and Commissioner McAllister, I think you  
24   also mentioned, that you'd like to have  
25   compliance -- and this Kevin Messner with the

1 Association of Home Appliance Manufacturers. The  
2 databases, there are several databases out there,  
3 there's the CEC, there's Energy Star, there's  
4 DOE, there's FTC, so as manufacturers trying to  
5 submit data, sometimes it is difficult, it's all  
6 in different formats, all in different materials,  
7 and it would be great -- it's hard enough on the  
8 Federal level to get DOE and FTC to coordinate,  
9 although they are doing that. It would be  
10 fantastic to get CEC and to have everyone get one  
11 submittal, that would help with compliance, get  
12 one consistent submittal and it certainly would  
13 reduce the burden on manufacturers and I think  
14 would help compliance in the long run. So as  
15 you're looking at enforcement rules to deal with  
16 compliance, the database on -- as our discussion  
17 on potentially certifying to the database could  
18 be an issue, getting the database and making it  
19 easier and consistent to pull from DOE or  
20 something like that. And I think that's  
21 something that you guys have, at least staff have  
22 been receptive to looking at and determining, so  
23 I just wanted to raise it, though.

24 COMMISSIONER DOUGLAS: We appreciate the  
25 comment and obviously, again in the area of

1 compliance assistance and getting compliance in  
2 part by making compliance as easy as possible,  
3 and also by raising awareness of the need to  
4 certify the California approved database. We  
5 would appreciate your ideas, your comments. I  
6 don't know if staff would like to talk about the  
7 database issues raised further or not, but  
8 certainly if you have ideas for how to make the  
9 process easier, we would love to hear from you.

10 MR. STRAIT: I can offer as a staff  
11 person that is currently working on a project to  
12 modernize the Appliance Efficiency Database, part  
13 of the modernization project is to hopefully  
14 incorporate a feature that will allow us to  
15 accept data directly from some of these other  
16 databases and transmit data to them, so that  
17 should give us a greater ability to coordinate  
18 and to possibly fix some issues of having  
19 differing formats. Right now, the project is in  
20 the solicitation phase. We don't anticipate  
21 having a deployable product any sooner than about  
22 two years from now. But it is a project that we  
23 are working on and we agree with your stated  
24 goals of increasing compliance through increasing  
25 ease of compliance and trying to bring some



1 harmonization between these different databases.

2 MR. GREEN: I'm John Green, I'm a Manager  
3 of Codes and Standards for Eaton Cooper Lighting,  
4 but I'm also an active member in the NEMA  
5 Lighting Systems Division. Both my company and  
6 at least the NEMA Lighting Systems Group would  
7 like to thank the Commission because we do really  
8 appreciate the effort that the Commission is  
9 putting into this rulemaking, and we support all  
10 of the goals that were outlined in the earlier  
11 slides. We believe that real enforcement can  
12 actually result in more energy savings for the  
13 state than some of the incremental increases that  
14 are being considered for some additional  
15 rulemaking. So we see this as a great benefit  
16 for the state in having some enforcement that can  
17 have some teeth.

18 That the enforcement is fair and enforced  
19 equally is of course of great importance to us.  
20 A couple of examples, I think, Dick Upton  
21 mentioned Internet sales and we feel that is  
22 probably a difficult bite to take, but I think  
23 it's an important issue that needs to be  
24 addressed because it is a growing market segment.  
25 In addition, Cheryl English sent in a chat

1 message about issues where a product may be  
2 shipped to an adjoining state, may not even be  
3 adjoining, but somehow makes its way into  
4 California, and there was also some additional  
5 talk of manufacturers always responsible for  
6 those products. I think that has to be  
7 considered very carefully. A wholesaler or  
8 retailer can move product around without our  
9 knowledge and without having some relief on that  
10 type of situation, a manufacturer would have to  
11 consider a California requirement to be national  
12 or almost global in scope, and have to  
13 manufacture all products they make to that  
14 standard, and I don't think that's where we want  
15 to go at this point. So I think having a blanket  
16 responsibility on the manufacturer has to be  
17 considered quite carefully. So thank you for  
18 your time.

19 MR. NUFFER: Thank you.

20 MR. LEMEI: Yeah, thanks. I'd like to  
21 just address that briefly and that is that I  
22 think you make a very good point, that there can  
23 be situations where a manufacturer may not be  
24 responsible for a sale in California, and there  
25 may be situations where a manufacturer is

1 responsible for a sale that occurs in California  
2 and those are cases where it's not registered in  
3 the database. Where the appliance is registered  
4 in the database, I think it's clearer that the  
5 manufacturer is responsible for the sales that  
6 are occurring in Southern California.

7 MR. NUFFER: Yes, Eddie?

8 MR. MORENO: Hello again. It's a  
9 pleasure to be back up here to express support  
10 for the CEC's efforts.

11 MR. NUFFER: Eddie, your name, please?

12 MR. MORENO: Sorry, Eddie Moreno with  
13 Sierra Club California. I just wanted to say  
14 that Sierra Club California and its 145,000  
15 members recognize the importance of today's  
16 workshop and developing Appliance Efficiency  
17 Enforcement Regulations. California needs strong  
18 Enforcement Regulations to ensure that we can  
19 continue enjoying the success of an Appliance  
20 Efficiency Program. These Regulations must  
21 illustrate the critical need for compliance which  
22 allows real life energy saving and monetary  
23 savings, as well as greenhouse gas emission  
24 reductions to reflect the projected savings and  
25 reduction goals for the program. We want to see

1 the state continue to combat climate disruption,  
2 we want to see air quality improve around the  
3 state, especially in disadvantaged communities,  
4 and we want to see the real energy savings. And  
5 this rulemaking process and the Enforcement  
6 Regulations will develop, will build on efforts  
7 already underway to make this a reality, so thank  
8 you for the efforts.

9 MR. NUFFER: Thank you. Other comments,  
10 questions?

11 MR. SPLITT: Pat Splitt from Aptech  
12 again. Recently I've been doing a lot of work  
13 with Appliance Standards and trying to get a  
14 particular type of equipment listed in the  
15 directory, and so I've gotten fairly deeply into  
16 the Regulations, and the more I get into the  
17 Regulations, the more I see wrong with them. It  
18 appears to me that, back in 2002 there was some  
19 big update to the Appliance Regs, and it seems to  
20 have gotten very confusing. And I don't want to  
21 go into all the details now, but in my reading of  
22 the Regulations, there is only supposed to be one  
23 appliance database, whatever we want to call it,  
24 that everything gets listed into. So if somebody  
25 wants to find out whether a piece of equipment is

1 listed, they know where to go, you go to the  
2 Appliance Database and then it's broken down from  
3 there, you do a search. That database is  
4 supposed to be used by both the Appliance people  
5 and Building Standards. Building Standards uses  
6 that same piece of database to determine whether  
7 a piece of equipment can be installed. Appliance  
8 people are regulating sales, building standards  
9 as regulating installation, they both refer to  
10 the same database theoretically, but in fact  
11 there are many different databases and the piece  
12 of equipment I've been working on for quite a  
13 while and had testing done according to the CEC  
14 certified approved test procedure, at a CEC  
15 certified testing laboratory, and that was  
16 completed last July, we're still trying to figure  
17 out how to get that data updated into a database  
18 so that we can sell the equipment. So one  
19 question I have is, well, if in fact the reason  
20 that this equipment might be installed illegally  
21 is because of the fault of the Commission, can I  
22 fine the Commission and get 2,500 bucks back for  
23 each time that they do this?

24 MR. NUFFER: No. And how about if we  
25 talk about this off line because that's not an

1 enforcement type question? I'd be happy to talk  
2 to you at another time.

3 MR. SPLITT: Okay, well, I'd like to set  
4 something up maybe right after the meeting, but  
5 it is an enforcement insofar as a lot of  
6 equipment may be illegal only because it's  
7 through no fault of the manufacturer, that you  
8 just haven't been able to figure out how to put  
9 it in the right place.

10 COMMISSIONER MCALLISTER: I would just  
11 point out that, you know, sort of first open eyes  
12 reading of a bunch of documents and text may not  
13 produce the full organic sort of reality in your  
14 understanding, and so I think staff could  
15 actually provide quite a bit of insight on why we  
16 are where we are and how it functions and the  
17 plans to improve it where it needs improvement,  
18 and so there's a certain sort of ramp-up, I  
19 think, that would be helpful for you to get from  
20 staff on that.

21 MR. NUFFER: Thank you. Yes, one more  
22 person?

23 MS. SWARTZ: Hi. My name is Molly Swartz,  
24 I'm an Attorney with Paul Hastings and I'm here  
25 on behalf of Osram Sylvania. And today I'm just

1 going to provide some general comments, we're  
2 still working through our more specific comments  
3 and this discussion will certainly inform those.

4           Osram supported the passage of SB 454 and  
5 now strongly supports the CEC's efforts to  
6 promulgate efficient Appliance Enforcement  
7 Standards. We believe that firm enforcement of  
8 Appliance Standards will maintain a level playing  
9 field among appliance manufacturers and ensure  
10 continued use of environmentally friendly quality  
11 appliances. These Regulations provide an  
12 opportunity for the CEC to create the appropriate  
13 incentives to ensure compliance with existing  
14 Standards. The Regulations should deter the sale  
15 of noncompliant units and enable the CEC to  
16 punish violations efficiently, while at the same  
17 time not unfairly disadvantaging compliant  
18 manufacturers.

19           Towards this end, the Proposed  
20 Regulations should make clear what exactly  
21 constitutes a violation subject to penalties.  
22 Further, the Regulations should provide the CEC  
23 with a clear and reasonable process for  
24 calculating penalties and streamlined enforcement  
25 to preserve Commission resources and ensure that

1 penalties are assessed fairly.

2           Again, we will be submitting formal  
3 comments on this next week and we look forward to  
4 working with you on this issue.

5           MR. NUFFER: Thank you. Any other  
6 comments in the room?

7           MS. SHAY: Hi. This is Lisa Shay,  
8 representing NRDC, Natural Resources Defense  
9 Council. We would just like to thank  
10 Commissioners and staff for holding this workshop  
11 and giving us the opportunity to comment today.  
12 NRDC has been a strong supporter of the appliance  
13 efficiency standards from the start, and we  
14 believe that it is essential to helping  
15 California meet its energy savings goals and  
16 maximizing the energy saved in the state. And so  
17 we're very pleased to see that this is moving  
18 ahead with the enforcement. We believe that the  
19 enforcements are essential in ensuring that the  
20 intent of these Standards are met and so, again,  
21 we're very pleased that this is moving forward.

22           And with regards to the Draft Enforcement  
23 Regulations, we have three set of comments. The  
24 first is that we recommend that the language in  
25 Section (a) makes it clear that the failure to



1 register is a violation, it's implied in Section  
2 (a)(1), but it's not very specific and we just  
3 recommend that the language makes it explicit  
4 that failure to register is a violation. We do  
5 believe that it is a prevalent problem, it is a  
6 major form of violation.

7           And second, we recommend that -- and this  
8 has been mentioned before many times, that the  
9 online retail be addressed in the regulations if  
10 it is the intent of the Commission to include  
11 online sales in the assessment of violations,  
12 that this be stated explicitly so that it is  
13 clear in the Regulations. And with the growth of  
14 online sales, we believe that it's going to  
15 become a bigger problem from year to year as the  
16 American Lighting Association said. And so many  
17 products in our research and other home products,  
18 our research has shown that many products that  
19 enter California do not meet the California  
20 Energy Efficiency Standards, and it's probably  
21 going to be a problem, too, with the appliances.

22

23           And lastly, we recommend that the  
24 Regulations give the Commission the authority to  
25 collect information needed from manufacturers and

1 retailers to investigate the violations. We  
2 believe that discovery of information is critical  
3 in informing whether a product is in violation  
4 and also the severity of the violation or the  
5 prevalence of violation. And the Commission  
6 needs to be able to obtain data from  
7 manufacturers and retailers in a streamlined way  
8 in order to do the assessments that it is  
9 entitled. And we will submit formal comments in  
10 written form next week with more detail, and  
11 suggestions on the language, and we look forward  
12 to actively participating in this rulemaking. So  
13 thank you.

14 MR. NUFFER: Thank you. Anyone online,  
15 Peter?

16 MR. STRAIT: Yes. Nathan Coelho has  
17 asked by chat, "Is there anything addressed with  
18 competitors, dealers, etc., falsely reporting a  
19 company to the Commission? And also, does the  
20 CEC provide any guidance to people intending to  
21 report a product's noncompliance as some sort of  
22 rationale as to why they feel a product is  
23 noncompliant?"

24 MR. NUFFER: Could you read that again,  
25 please?

1           MR. STRAIT: He submitted two comments,  
2 the first is if there's anything addressing if  
3 competitors falsely report a company to the  
4 Commission that is a false claim that a product  
5 is noncompliant when it actually does comply, and  
6 stemming from that, a question of are we going to  
7 provide any guidance such as the minimum  
8 threshold to say if you are going to accuse  
9 someone of being noncompliant, some level of  
10 specificity that we would want to have in that  
11 accusation.

12           MR. LEMEI: So regarding the -- I guess  
13 regarding both questions, the information comes  
14 to the Energy Commission in any number of ways,  
15 but the Energy Commission conducts its own -- and  
16 we don't have the slide up anymore of the flow  
17 chart, but the Energy Commission will conduct its  
18 own independent investigation and staff will make  
19 its own independent determination whether they  
20 believe the violations occurred, and whether it  
21 will go forward potentially with issuing a Notice  
22 of Violation so that, you know, obviously some  
23 information we receive is more reliable and  
24 better than others, some information is  
25 unreliable, and it's incumbent upon staff to

1 makes its own independent assessment irrespective  
2 of how the issue was raised. Does that answer  
3 the question?

4 MR. STRAIT: I will see if he has any  
5 response, I'll give him a moment to type if he is  
6 doing so. I do not see any other hands raised,  
7 however, we would need to unmute the call-in  
8 users that may be only attending by phone. If  
9 you would like, I can do that now. All right, I  
10 will unmute people one by one. Anyone who has  
11 too much background noise, I will have to re-  
12 mute, and this will only be for the people that  
13 are listed here as a call-in user that may not  
14 have access to chat. If anyone is attending by  
15 phone and would like to make a comment, please  
16 speak now. I'm not hearing any comments from the  
17 call-in users, so I'm going to re-mute these  
18 lines. And I don't see that Nathan has sent any  
19 follow-up comment or question by chat, so I  
20 believe we answered his question.

21 MR. NUFFER: Why don't we go to the Next  
22 Steps slide, please, Peter.

23 The next steps for us is to carefully  
24 consider all of the comments we have received  
25 today, and if you have written comments, please

1 get them to us by March 7th and we'll begin to  
2 include those comments in our deliberations as to  
3 how we might revise the Regulations.

4           As I mentioned, we're in the preliminary  
5 phase of the rulemaking. Now we'll go back and  
6 consider the Regs again and put together sort of  
7 a final draft that will be ready about mid-  
8 August, we think, for public review. And after  
9 the 45-day review period, then the Commission  
10 will conduct a hearing at a Business Meeting, a  
11 formal hearing to vet those Regulations. So  
12 that's between now and the next four or five  
13 months.

14           Could you do the next slide, please? And  
15 as I mentioned, we're serious about providing  
16 assistance in any number of ways to try to make  
17 sure that regulated companies and individuals  
18 understand the certification and compliance  
19 requirements before these Enforcement Regulations  
20 take effect. So it would really be helpful if  
21 you have an interest and the time as we begin  
22 developing an outreach and education program, it  
23 would be nice to get your help, not only in  
24 designing the program, but in getting your  
25 members and companies to participate. In the

1 meantime if you have specific compliance or  
2 certification questions, you can send an email to  
3 that link and you'll be directed to the right  
4 staff person, who may be able to help you.

5           I mentioned we want your written comments  
6 by March 7th. If you send comments  
7 electronically to that docket link, please refer  
8 to that docket number so it stays in the correct  
9 spot in our computers, and also you may send  
10 paper copies and refer to that docket number  
11 also. And if you have any questions, call us,  
12 call Galen or myself, and those are the links  
13 starting from the broadest to the most specific,  
14 which is the Enforcement Rulemaking. We'll try  
15 to keep those sites updated so you can go there  
16 and find out where we are in the process, and you  
17 certainly could always call us and ask.

18           MR. LEMEI: And if I can just say one  
19 thing kind of in closing from the staff  
20 perspective, and, you know, I might have said  
21 this in opening, but I think it's appropriate in  
22 closing. The Regulations philosophically take a  
23 fairly modest approach to empower the Commission  
24 to give the Commission the authority to implement  
25 a program, to assess penalties, to undertake

1   hearings, and do so in a fairly modest manner.  
2   Here we've discussed a number of issues that the  
3   Regulations do not specifically address, but that  
4   I think the Commission is empowered to act upon,  
5   for example, Internet sales, for example, limits  
6   upon avoiding undue penalties, avoiding undue  
7   burdens, reasonableness in the assessment of  
8   penalties. And while the Regulations don't speak  
9   to these explicitly, or don't necessarily address  
10   Internet sales specifically, I do think that they  
11   are encompassed; however, to the extent that  
12   folks in this room and folks online and  
13   stakeholders think it's appropriate for the  
14   Regulations to address something explicitly  
15   that's not currently explicit, we really do look  
16   forward to your written comments and more  
17   specificity in your comments is helpful to the  
18   extent you have a specific proposal for our  
19   consideration and just we really wanted to thank  
20   you for your participation and your interest for  
21   this.

22           COMMISSIONER DOUGLAS: Yeah, actually I'm  
23   going to tag on to that, Galen, and ask one or  
24   two specific questions that people can feel free  
25   to address now or address in your comments. One

1 is that at the very beginning of the workshop we  
2 had some discussion about what entity in the  
3 chain of transactions that might lead to a  
4 noncompliant product being sold in California may  
5 be considered to have committed a violation, you  
6 know, is it the manufacturer, is it the retailer,  
7 is it potentially somebody else in that chain?  
8 And the perspective that we have undertaken in  
9 the draft that you have before us is one that  
10 does not really assign a default answer to that  
11 question out of the view that, you know, there  
12 may be an obvious answer most of the time, but  
13 facts really matter. If the manufacturer has no  
14 ties with California, didn't intend for the  
15 product to reach California, you know, didn't  
16 certify the product because it wasn't terribly  
17 foreseeable that it would end up in California,  
18 that manufacturer is in a very different place  
19 than one that certified here, but misrepresented  
20 the performance of a product, or didn't certify  
21 here, but clearly sold to entities that are  
22 located here. And so, just as one example. And  
23 so our view was that, without facts in front of  
24 us, it wasn't productive to assign by rule that  
25 one party or another is really, you know,



1 responsible in all cases. The American Lighting  
2 Association, in your comments you made a comment  
3 that I think we should explore further, today or  
4 later if in comments if you prefer, you asserted  
5 that it would be a burden on retailers to check  
6 and see if products that they ordered from  
7 manufacturers are compliant, and you argued that  
8 it's really more appropriate to put the burden on  
9 manufacturers. Again, to me that might be a fact  
10 specific question; you know, a small business  
11 that sells a whole lot of different lighting  
12 products might be in a different place than  
13 another kind of business that sells another kind  
14 of product. But I did want to offer you the  
15 opportunity to provide some more information on  
16 that particular question of whether it's  
17 reasonable to assume that a retailer would, as a  
18 course of business, ensure that the products that  
19 they sell are in the database. Obviously,  
20 everyone is welcome to submit information on that  
21 kind of question.

22 Galen mentioned the issue of Internet  
23 sales and a lot of people brought it up today.  
24 My own view is that the way that the Draft  
25 Regulations are written, sale in California does

1 not exclude Internet sales, it includes Internet  
2 sales, but we didn't call it out explicitly. The  
3 fact that it's not called out explicitly was  
4 noted by a number of you, and so again, I'll  
5 invite you to talk to us either at the moment or  
6 through written comments about whether your  
7 concern is more, say, a policy concern, you  
8 didn't see the words there, and so you're not  
9 sure what our intent is; or whether it's a legal  
10 concern and you think there's some ambiguity that  
11 we're leaving because we don't have those  
12 particular words in there, even though sold and  
13 offered for sale, you know, presumably sold in  
14 California covers certain, or many categories and  
15 types of transactions that could occur over the  
16 Internet. So your comments -- Galen also pointed  
17 out, I think rightly, that one of the -- you  
18 know, again, we could have attempted to draft a  
19 package of Regulations that anticipated lots of  
20 different situations that might arise and tried  
21 to resolve them, or tried to set up rules to  
22 resolve them ahead of time in the Regulations,  
23 and we didn't in part because this is a new  
24 program. We're not -- I'm not confident of our  
25 ability to anticipate all of the situations that

1 might arise and to develop an appropriate rule  
2 set that we would want to apply by Regulation to  
3 anything that might arise. However, to the  
4 extent that you as stakeholders believe that  
5 there are circumstances like that, that you think  
6 there should be a default or a rule, as opposed  
7 to a case-by-case type analysis to address, you  
8 know, like for example the issue of whether there  
9 should be a maximum penalty, you're welcome and  
10 we invite you to submit that kind of comment. So  
11 let me just ask, did I trigger anyone to want to  
12 speak out now? Or would you prefer to hold back  
13 and to submit in comments to us? Go ahead.

14 MR. LINSTONE: Clark Linstone again.  
15 Just a comment. The point on Internet sales, I  
16 think it would be helpful to specifically say  
17 that. My comments were really that I believe it  
18 was covered, but more to the enforcement side of  
19 what mechanisms would be in place to enforce the  
20 coverage so we have the level playing field. And  
21 that's where I think there's some legal issues  
22 surrounding out-of-state entities and how that  
23 enforcement would actually take place.

24 MR. MESSNER: I would just add that  
25 clarity is always helpful so that there's a clear

1 understanding in the chain of commerce on who is  
2 responsible, so I think certainty in that area -  
3 for our members, manufacturers like certainty,  
4 they don't like surprises, they want to know the  
5 lay of the land so they can plan for it and not  
6 get hit at the last hour, "Oh, I didn't know that  
7 was us." So certainty is very important, and so  
8 where that is in that chain, and there's a lot of  
9 other areas, and in Canada I'm thinking in  
10 province a lot of times it's a first importer, so  
11 there's things like that, so you don't know  
12 exactly where because that's what they have  
13 authority over is who brings in, and sometimes  
14 whether our members could sell an appliance  
15 online or sold through a distributor, the  
16 distributor could bring, or a retailer, and you  
17 have regional distributors, someone gave you an  
18 example of Nevada, you don't know where, the  
19 manufacturers don't necessarily know where  
20 exactly it's going, so some clarity on that. It  
21 is a difficult one to grapple with, but one  
22 example just off the top of my head is, and we'll  
23 look at it more in detail, but first importer is  
24 generally what's seen. And that can be different  
25 depending on where it's sold and how it's sold,

1 and then how that appliance came in is also tough  
2 to do sometimes.

3 COMMISSIONER DOUGLAS: Yeah, I appreciate  
4 that and look forward to whatever suggestions on  
5 specifics you can provide.

6 MR. UPTON: The challenge that you have  
7 certainly lends itself to being approached case-  
8 by-case. And you're looking for that direction.  
9 As I indicated, American Lighting Association has  
10 manufacturers and retailers and other categories  
11 of membership, as well. And there's no question  
12 in my mind that a manufacturer is going to have  
13 product end up in California that's not  
14 registered here because of where they had  
15 distribution centers. And when that happens,  
16 people of a reasonable mass will say it happened,  
17 and I'm comfortable that you'll recognize that,  
18 and when the time finds it, why, you will. But I  
19 agree with my friend relative to the appliance  
20 dealers, the more specificity you can give us,  
21 the easier it's going to be.

22 The other thing, going along with Clark  
23 Linstone's comment to you about Internet sales,  
24 whatever you can do that would give comfort to  
25 the California business person that they're not

1 standing alone, but indeed all aspects of  
2 business would come into the state, be they  
3 catalogue sales or Internet, I think would be an  
4 intelligent thing to do.

5           And I'd like to go beyond your questions  
6 in just one other area and that's the matter in  
7 how you roll it out. I've talked to Mr. Nuffer  
8 and I've been very pleased with what I've been  
9 hearing from him on some of the comments, so,  
10 hey, yeah, we're going to send lots of letters  
11 and do all kinds of things. But in rolling this  
12 program out come next August or September, to put  
13 it in a positive perspective that this is being  
14 done to help California business, to help them  
15 operate by the rules, as opposed to all  
16 businesses are evil and, gosh, we have to protect  
17 the poor consumer from them, is not a healthy  
18 thing for business, it's not healthy for the  
19 consumer because of lack of choice. And I think  
20 that's an important thing as you're moving  
21 forward. Any questions you want to throw back at  
22 me that would be fair?

23           COMMISSIONER MCALLISTER: Yeah, so I mean  
24 I think we know that the vast majority of players  
25 in this space want to do the right thing, so

1 mostly what our job is going to be, as  
2 Commissioner Douglas indicated before, is try to  
3 avoid compliance actions by making sure that  
4 everybody knows what they're supposed to be doing  
5 so that they can actually do it, which is what  
6 they want. And certainly, I think that's clearly  
7 your position and you want to help your industry  
8 thrive and grow here in California and get the  
9 right products into the market that people will  
10 buy.

11           So I wanted to make just an overarching  
12 comment that part of the way this -- and any  
13 other proceeding really, but definitely this  
14 proceeding, ends up in the right place is when we  
15 have the marketplace, market actors out there  
16 with the nitty gritty on the ground rubber hits  
17 the road experience, you know, through your  
18 membership, through your business activities, and  
19 sort of give us the reality check of what goes on  
20 out there in the world. Now, we also have to  
21 maintain a credible sort of threat out there so  
22 that people do comply. I mean, mostly it's do  
23 the right thing, but also when push comes to  
24 shove and there is a violation, we have to have  
25 the authority and the mechanism and the tools to

1 enforce. But you know, I think having you here,  
2 letting staff know at each juncture what the  
3 likely impact of different options might be, and  
4 what sorts of information the marketplace needs  
5 in order to do it is really key, so I wanted to  
6 just say thanks for being here, and certainly  
7 invite you and stakeholders that are out there  
8 duking it out in the marketplace every day, to  
9 let us know how we could do better, how things  
10 are going, any suggestions you have what's  
11 working and what's not working when those things  
12 come up really is key. I mean, we know that it's  
13 not easy out there in any business environment to  
14 run a business, I mean, there's just a lot of  
15 things you have to do, and I think we want to  
16 make sure that we're pushing on the right  
17 pressure points with the new regulations such as  
18 this. So that was kind of my overarching invite  
19 to at each juncture provide us with comments and  
20 interact with staff and whoever else at the  
21 Commission you feel like you need to, to make  
22 sure things head in the right path.

23 MR. UPTON: We'll be with you as you go  
24 through this and any way we can help, we'll be  
25 pleased to do. And when your Regulations are



1 finalized, then we'll work with you to try to  
2 promulgate them at least to our membership and as  
3 broadly and effectively as we can. And I can  
4 tell you that will take multiple mailings because  
5 people don't read everything the first time, or  
6 the second time, or the third time, and that's  
7 because people are busy, fortunately. And we  
8 just need to understand that, and if we can be  
9 helpful on that, we will. Thank you very much.

10 MR. SPLITT: Pat Splitt from Aptech for  
11 probably the last time today. I just wanted to  
12 emphasize again that I think there has to be more  
13 coordination between the appliance people and  
14 building standards, especially for this Internet  
15 sales question. If in fact this equipment is  
16 installed when it wasn't properly certified and a  
17 Building Official or someone actually realizes  
18 this, the installer is required to have signed an  
19 installation certificate certifying that he  
20 installed equipment that did meet the standards,  
21 so he's clearly liable. And if the Building  
22 Department then required that he remove that,  
23 say, nonconforming air-conditioner, and replace  
24 it with one that does conform on his own money,  
25 it's not going to take very many of those

1 instances before every contractor in the state  
2 knows what to do or not to do. And somehow the  
3 two groups just have to get together, so maybe  
4 there's a problem that you can't handle very well  
5 at the plant side, but the Building Standards  
6 people can take care of it like that.

7 MR. NUFFER: Any other comments or  
8 questions?

9 COMMISSIONER DOUGLAS: All right, I don't  
10 see any comments or questions, obviously we'll  
11 look forward to comments. Did you tell them --  
12 do we have a comment deadline?

13 MR. NUFFER: Yes, March 7th.

14 COMMISSIONER DOUGLAS: Got it.

15 MR. NUFFER: And I'd also like to, if I  
16 might, on the outreach and education page, there  
17 was the link to the Appliance Enforcement  
18 Rulemaking, it has a little box where you can  
19 sign up for our listserv, so that we can be sure  
20 to notify you when something occurs, so please  
21 look at that.

22 COMMISSIONER DOUGLAS: All right, the  
23 Public Advisor pointed out you can sign up right  
24 here, right now at that computer over there if  
25 you would like to get on the listserv and you're

1 not already.

2           So anyway, I just want to start wrapping  
3 things up, or finish wrapping things up by  
4 thanking all of you for being here. As I said  
5 earlier, our goal for this program is compliance.  
6 This is an important tool to achieve compliance,  
7 it's not the only tool, but we're really looking  
8 forward to your ideas. We recognize the nature  
9 and importance of the authority that the  
10 Legislature has given the Energy Commission to  
11 enforce its Energy Efficiency Standards for  
12 appliances, and it is incumbent on us to proceed  
13 with this new authority responsibly and fairly  
14 and reasonably, and we begin in that process by  
15 having this kind of dialogue and soliciting input  
16 from our stakeholders, and particularly those of  
17 you who, as Commissioner McAllister said,  
18 function out in the marketplace every day and are  
19 going to be critical to our success, and have  
20 been critical to our success over the years  
21 really with appliance standards. We value, need  
22 and want to hear your input for how to do this in  
23 the best possible way. We're looking forward to  
24 getting the comments. And we are very much  
25 looking forward to working with you in the

1 context of the roll-out of this Reg package as it  
2 becomes final because we do very much want to do  
3 outreach, and whether it's sending letters or  
4 offering webinars, or working with trade  
5 associations to get information in journals or  
6 trade publications, or working with manufacturers  
7 on the database and certification, whatever, you  
8 know, we don't have the resources to do  
9 everything all at once, but we really want to  
10 hear your ideas for the best possible feasible  
11 kind of outreach program around this, so that we  
12 can hopefully get the word out and get people, as  
13 Commissioner McAllister said absolutely  
14 correctly, most of whom absolutely want to do the  
15 right thing and just need a little help  
16 understanding the rules and what they're supposed  
17 to do, and get them the kind of assistance to do  
18 that. So anyway, Commissioner McAllister,  
19 closing comments?

20 COMMISSIONER MCALLISTER: I just want to  
21 thank Commissioner Douglas for her leadership on  
22 this, as Lead Commissioner, enforcement is  
23 something we've had in certain areas, but this is  
24 sort of a foray into a new area and we're doing  
25 it in a couple of different places right now and

1 it's important to the Commission, it's important  
2 for us to get it right. Definitely appreciate  
3 everybody's confidence that we are going to get  
4 it right and we're doing our best. And I just  
5 want to thank staff for all their hard work on  
6 this and for a good job today and going forward.  
7 Thanks very much.

8 MR. NUFFER: Thank you all very much.  
9 That concludes the workshop.

10 (Whereupon, at 12:25 p.m., the workshop  
11 adjourned.)

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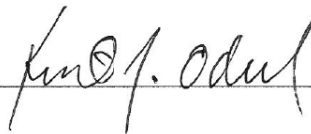
25

**REPORTER'S CERTIFICATE**

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of March 2014.

A handwritten signature in cursive script, appearing to read "Kent Odell", is written over a horizontal line.

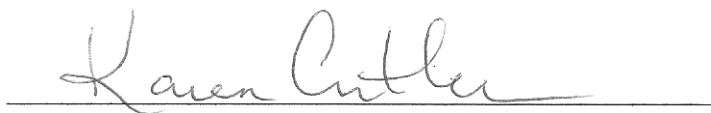
Kent Odell  
CER\*\*00548

### **TRANSCRIBER'S CERTIFICATE**

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of March, 2014.

A handwritten signature in cursive script, reading "Karen Cutler", is written over a horizontal line.

Karen Cutler  
Certified Transcriber  
AAERT No. CET\*\*D-723